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June 19, 1997

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William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-262; Ex Parte

Dear Mr. Caton:

A second order ("Second Order") in the Access Charge Reform docket (CC Docket No. 96-262) is expected to be released by the end of June.¹ This Second Order will address access pricing flexibility for price cap local exchange carriers ("LECs"). The State of Hawaii (the "State")² urges the Commission to carefully consider the importance of the geographic rate averaging requirement of Section 254(g) of the Communications Act.³ In particular, the Commission should note that Section 254(g) prohibits the deaveraging of any end user (i.e., subscriber) rates based on interexchange service (including subscriber line charges), regardless of whether carrier access charges are deaveraged. The Commission should not forbear from maintaining that requirement.

¹ See Remarks of FCC Chairman Reed Hundt Before the United States Telephone Association Inside Washington Telecommunication Roundtable Luncheon (May 21, 1997) at 7 ("Our Order providing access pricing flexibility to price cap LECs should be out by the end of June.").

² This ex parte letter is submitted by the State of Hawaii acting through its Department of Commerce and Consumer Affairs.

³ 47 U.S.C. § 254(g).

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William F. Caton
Federal Communications Commission
June 19, 1997
Page 2

As the Commission noted in its Rate Averaging Order, Congress was "fully aware of geographic differences in access charges when it adopted Section 254(g), and intended us to require geographic rate averaging even under these conditions."⁴ Congress codified the Commission's rate averaging and integration policies for the express purpose of ameliorating the adverse impact on subscribers of geographic variations in access costs and assuring that all Americans benefit from the advent of increased competition. Indeed, just recently the Commission acknowledged the regulatory distinction between access costs and subscriber charges. In particular, the Commission determined that LECs may deaverage access-like charges to IXC but that Section 254(g) requires IXCs to continue to geographically average subscriber charges.⁵

In its First Report and Order in CC Docket No. 96-262,⁶ the Commission properly declined to forbear from enforcing Section 254(g) with regard to deaveraged access charges assessed on interexchange carriers ("IXCs") that are passed through to IXC customers. Specifically, the Commission correctly ruled that IXCs must continue to pass through non-traffic sensitive ("NTS") common line costs to their customers on a geographically averaged basis, even though these access costs may be assessed on the IXCs on a deaveraged basis:

We find that establishing a broad exception to section 254(g) to permit IXCs to pass through flat-rated charges on a deaveraged basis may create a substantial risk that many subscribers in rural and high-cost areas may be charged significantly more than subscribers in other areas.⁷

So far so good. However, the Commission then noted that it will examine in the Second Order the issue of forbearance of Section 254(g) with respect to IXC recovery from end users

⁴ Policy and Rules Concerning the Interstate, Interexchange Marketplace -- Implementation of Section 254(g) of the Communications Act of 1934, as amended, 11 FCC Rcd 9564, 9583 (1996).

⁵ See Alascom, Inc., Cost Allocation Plan for the Separation of Bush and Non-Bush Costs, Memorandum Opinion and Order on Reconsideration and Order Approving Cost Allocation Plan, AAD 94-119, DA 97-320, at ¶ 43 (Com. Car. Bur., Feb. 10, 1997) ("For IXCs, [access] rates are business costs which in addition to other costs are recovered from their subscribers through averaged rates.").

⁶ See Access Charge Reform, First Report and Order, CC Docket No. 96-262, FCC 97-158 (rel. May 16, 1997) ("First Order").

⁷ First Order at ¶ 97.

William F. Caton
Federal Communications Commission
June 19, 1997
Page 3

of presubscribed interexchange carrier charge ("PICC") costs will be warranted in the future as local access competition increases.⁸ Also of concern, the Commission stated that it would consider the geographic deaveraging of the Subscriber Line Charge ("SLC") in the Second Order, along with the timing and degree of IXC pricing flexibility and the possible "ultimate deregulation" of IXC rates.⁹

The geographic averaging of end-user, interexchange rates is a cornerstone of this country's commitment to preserving affordable local rates for all Americans. Congress expressly codified geographic rate averaging and rate integration into the Communications Act (Section 254(g)). Congress would not have codified a geographic rate averaging requirement for interexchange rates if it had intended to rely solely on the universal service fund to ensure nationwide, affordable rates.

The introduction of some competition will not, by itself, change the disparity between high-cost and low-cost service areas. Subscribers in high-cost areas will continue to need the assurance of rate averaging to ensure affordable local rates. Indeed, some competition can make the disparity between urban rates and the rates in rural and other high-cost areas even worse because competition will likely emerge, at least initially, only in urban areas.

Although the Commission is authorized to forbear from the geographic rate averaging requirement in certain situations, Congress made it clear that such forbearance authority should be used sparingly and only for "limited exceptions."¹⁰ There is nothing in the record showing how an elimination of the geographic rate averaging requirement is likely to assure that users in communities with high-cost areas will receive service at the same rate levels as users in communities with low-cost areas. In other words, there is no showing of how the statutory mandate of Section 254(g) can be achieved by eliminating the regulatory rate averaging requirement.

⁸ Id. at ¶ 98.

⁹ Id. at ¶ 87.

¹⁰ H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess., at 132 (1996). Of course, there is no statutory authority to forbear from the rate integration requirement of Section 254(g).

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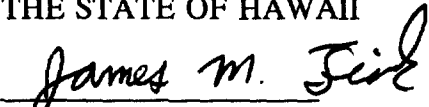
William F. Caton
Federal Communications Commission
June 19, 1997
Page 4

In conclusion, the Commission should assure that any end user charges for interexchange services remain subject to Section 254(g), and that any variations in the access charges paid by carriers not be the basis for permitting interexchange carriers to depart from the mandate of Section 254(g).

Sincerely,

THE STATE OF HAWAII

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